IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.194 OF 2005

Sahebrao Kondiba Beloshe and Ors. Appellants

Versus

Jagannath Khandu Beloshe (since deceased) Smt.Tarabai J.Beloshe & ors. Respondents

Mr.Sameer R.Bhalekar for appellants

CORAM : P.V.KAKADE, J.

DATE : 14TH JUNE, 2005.

P.C.:

1. The present appeal is preferred by the appellants against the judgment and order passed by Additional District Judge, Satara on 4.11.2004 allowing

the appeal of the respondents and setting aside the order of dismissal of the suit which was for partition. The decree for partition also came to be granted by partly decreeing the suit.

2. The plaintiff filed the suit for partition and separate possession on the ground that the suit property was his ancestral property and belonged to joint family and hence the plaintiff was entitled to his share and separate possession thereof from the property. The defendant challenged the suit on the ground that there was previous partition between the plaintiff's father and father of defendant and such partition was acted upon and hence the suit for partition was not maintainable. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the defendants had succeeded in establishing previous partition and separate possession of respective shares and as such the plaintiff was not entitled to partition of the suit property and suit came to be dismissed by the trial court. The appeal was preferred to the District Court, Satara. The learned District Judge after hearing both the parties adjudicated the dispute on merits and came to the conclusion that the defendants

had not proved that there was a previous partition by metes and bounds of all the ancestral and joint family property and as such the plaintiff was held to be entitled for decree for partition and appeal was allowed and suit came to be decreed partly holding that plaintiff and defendant no.4 had one half joint share in all the suit property except the land Survey No.147/1 out of the suit property Block No.575 and the remaining half is that of the defendant nos.1 to 3 and 5.

3. I have heard the learned counsel for the appellants exhaustively. With his help I have gone through the judgement of both the courts below.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The entire dispute pertains to evidence of holding of the property on the basis of mutation entries which showed that part of the suit properties were held by defendants in respect of some of the properties. However, remaining lands continued to be held of joint ownership of Jagannath and Kondiba. In view of this position the learned appellate court came to the conclusion that one could not ascertain as to which was

the portion was allotted to which of the sharers and therefore, factum of previous partition was held to be not established conclusively. The learned counsel for the appellant sought to put reliance on the ruling of then Nagpur High Court in the case of **Dattatraya Ramrao Chorghade vs. Shakuntalabai d/o Rambhau Chorghade** reported in **AIR 1956 NAGPUR 95**. I have perused the ruling in details, however ratio thereof is not applicable to the present set of facts. In the present case it is submitted on behalf of the appellant that it is not the case of the defendant that there was partial partition, if it is so then mere physical holding of part of the property and mutation entries thereon is not sufficient to jump to the conclusion that there were previous partitions amongst the sharers, unless it is shown that all the sharers were holding the entire joint family property separately to commensurate with their respective shares by metes and bounds. In other words the reasoning adopted in this regard by the lower appellate court judge appears to be legal and proper therefore would brook no interference.

5. In my considered view, there is absolutely no substantial question of law involved in this appeal.

Time and again it is held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In the present case the lower appellate court judge appears to have appreciated the entire evidence in its proper perspective and hence I hold that the appeal must fail. In the result the appeal stands dismissed.

6. Consequently the civil application no.410 of 2005 also stands dismissed.

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